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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1771

CURTIS HOWE SPRINGER, ET AL., *Petitioners*

v.

UNITED STATES OF AMERICA, ET AL.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONERS

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This Brief is submitted by Petitioners pursuant to Rule 24 in reply to the Memorandum for the United States in Opposition filed by the Solicitor General of the United States.

1. In its Memorandum, the United States asserts that Petitioners have contended "that 30 U.S.C. 38 removes the requirement of discovery of a valuable mineral deposit where the claimant has been in pos-

session for a period equal to the period of the applicable state statute of limitations." (Memo. p. 2). This characterization of Petitioners' contentions is erroneous. At no time have Petitioners contended that 30 U.S.C. 38, which is applicable to holding of mineral lands over long periods of time, removes the element of discovery. Petitioners have asserted that said section lowers the burden of proof as to the element of discovery as well as other elements usually required to establish a mining claim, but nowhere have Petitioners contended that discovery is not required. Petitioners argue that such lower burden of proof should have been applied in the proceedings below instead of the higher burden actually employed.

2. The United States further asserts, and quotes from the Court of Appeals below, that Petitioners' "activities cannot by any stretch of the imagination be considered the mining of valuable minerals." (Memo. p. 3). Petitioners submit that this very point is the subject of extensive argument in the Petition (Pet. pp. 26-34) and cannot be summarily dismissed by a quotation unsupported by rebuttal argument, particularly since Petitioners' argument demonstrates that this view of the Court of Appeals is erroneous.

3. The Memorandum in Opposition next suggests that Petitioners are attempting by this action to locate "bathing salts" and that "bathing salts" are not locatable because their primary constituency is sodium. (Memo. p. 3). Again, this is an erroneous interpretation of Petitioners' contentions. The Petition adequately demonstrates why such a neat and pat characterization is in error, because the minerals are not relied upon chiefly for the sodium contained in such minerals and, if the Government's argument has any

validity, the natural pervasiveness of sodium would prevent almost all mining activities and minerals from being subject to location. (Pet. pp. 26-28).

4. The Memorandum in Opposition asserts that Petitioners bear the burden of proof in this case, citing two cases for this proposition, *Foster* v. *Seaton,* 271 F.2d 836 (D.C. Cir. 1959); *Converse* v. *Udall,* 399 F.2d 616 (9th Cir. 1968), *certiorari denied,* 393 U.S. 1025 (1969). (Memo. p. 3). These cases, however, relate to the burden of proof required under other parts of the Mining Laws and do not consider the extent of the burden of proof required under 30 U.S.C. 38. The Petition herein (pp. 15-22) adequately shows that 30 U.S.C. 38 establishes a lower burden of proof as to the element of discovery for a long term claimant and that Petitioners have met this burden.

5. The United States urges on this Court the proposition that estoppel does not apply against the federal Government. (Memo. pp. 3-4). Petitioners, on the other hand, have adequately pointed out why the doctrine of estoppel should apply in this case. As shown in the Petition, the United States Court of Appeals for the Ninth Circuit, has applied estoppel against the federal Government in circumstances very similar to that presented here. *United States* v. *Lazy F C Ranch,* 481 F.2d 985 (9th Cir. 1973). As pointed out in that case, justice and fair play on the part of the Government when dealing with its citizens in circumstances such as those involved in the instant case require that the Government be estopped from denying the validity of Petitioners' claims. The Government has simply ignored this case and the reasoning set forth therein.

6. The United States contends that, in any event, there were no circumstances constituting estoppel. (Memo. p. 4). Petitioners attempted to argue estoppel in the District Court but the court there held, erroneously, that such issue was not applicable. (Hearing on Application of Defendant for Stay of Injunction Pendente Lite, August 2, 1971, Tr. pp. 5-7); (Contempt Proceeding, October 20, 1973, Tr. pp. 212-213); and (Hearing on Motion for Partial Summary Judgment, January 9, 1973, Tr. p. 19). Consequently, no direct evidence on that issue was introduced. Nevertheless, the record shows the elements of estoppel have been established, (See Pet. pp. 23-25), and the factors supporting such elements have not been denied previously by the Government.

In short, the Memorandum for the United States in Opposition disregards the facts, the Mining Laws of the United States and the applicable decisions of this Court. The Petition for a Writ of Certiorari should accordingly be granted.

Respectfully submitted,

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